

STEPHEN PETERSON and  
CHARMAINE PETERSON,  
husband and wife,  
  
Plaintiffs,  
  
vs.  
  
sanofi-aventis U.S. LLC, a foreign  
limited liability company,  
  
Defendant.

)  
) **NO. CV-12-202-LRS**  
)  
) ORDER GRANTING MOTION  
) FOR SANCTIONS AND  
) DENYING MOTION FOR  
) PARTIAL SUMMARY  
) JUDGMENT  
)

**BEFORE THE COURT** are the Plaintiffs's Motion For Sanctions (ECF No. 29) and the Plaintiffs' Motion For Partial Summary Judgment (ECF No. 31). These motions were heard with telephonic oral argument on August 1, 2013. Paul J. Burns, Esq., argued for Plaintiffs. Ryan P. Hammond, Esq., argued for Defendant. This order memorializes the rulings the court delivered from the bench at the conclusion of the oral argument.

## I. BACKGROUND

As a senior sales representative employed by sanofi-aventis, Plaintiff Stephen Peterson's duties were to sell products in Defendant's portfolio to hospitals in

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1 Eastern Washington and Northern Idaho with his 44 year old peer, Angela Peck. ECF  
2 No. 35, Exhibit A, at 2. On March 19, 2009, Plaintiff was informed that his  
3 employment was being terminated, and his duties were being assumed by Ms. Peck.  
4 *Id.* Plaintiff was 59 years old at the time of his discharge.

5 This action was removed from Spokane County Superior Court based on  
6 diversity of citizenship and federal question jurisdiction. Plaintiff asserts wrongful  
7 termination claims under the Washington Law Against Discrimination (WLAD),  
8 R.C.W. Chapter 49.60, for age discrimination (R.C.W. 49.60.180), and for unpaid  
9 severance benefits under the Employee Retirement Income Security Act (ERISA), 28  
10 U.S.C. § 1132.

## 11 12 13 **II. MOTION FOR SANCTIONS**

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15 Early in the discovery process, Plaintiffs sent Defendant a list of  
16 interrogatories. ECF No. 29 at 3. This list of interrogatories contained the  
17 specific interrogatory in question, Interrogatory No. 5. *Id.* Interrogatory No. 5  
18 asked:

19 Please state the reason plaintiff was discharged from his employment  
20 with defendant.

21 *Id.* Defendant's response to Interrogatory No. 5 stated:

22 sanofi-aventis objects to this interrogatory on the grounds that  
23 responsive information is equally available to Plaintiff Stephen  
24 Peterson. Notwithstanding such objections, and subject to them, sanofi  
answers as follows:  
See sanofi 0000067.

25 *Id.*

26 One day after the discovery cutoff date, Defendant supplemented its  
27 response, stating that Plaintiff was terminated for falsifying company records. *Id.*  
28 at 4. Plaintiff moves for sanctions pursuant to Rule 37(d).

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1       **A. Rule 37(d)**

2       Rule 37(d)(1)(A) provides in relevant part:

3       The court where the action is pending may, on motion, order sanctions if:

4       ...

5       (ii) a party, after being properly served with interrogatories under Rule  
6       33 or a request for inspection under Rule 34, *fails to serve* its answers,  
7       objections, or written response.

8       (emphasis added).

9       Plaintiffs claim that Defendant's evasive answer to Interrogatory No. 5  
10       warrants sanctions. However, Plaintiffs misinterpret the ambit of Rule 37(d).  
11       Evasive responses are contemplated in Rule 37(a)(4) which specifically declares  
12       they are to be treated as a failure to respond for the purposes of that subsection. If  
13       evasive responses were always considered a "failure to respond," then there would  
14       be no need for Rule 37(a) to expand the definition of "failure to respond" to  
15       include evasive responses. Indeed, the Ninth Circuit has declined to impose  
16       sanctions under Rule 37(d) in similar circumstances when responses to  
17       interrogatories were evasive and misleading. *Fjelstad v. Am. Honda Motor Co.,*  
18       *Inc.*, 762 F.2d 1334, 1339 (9th Cir. 1985). While Rule 37(a) provides sanctions  
19       for evasive responses, Rule 37(d) only provides sanctions for a complete failure to  
20       serve a response, and is thus not applicable here.

21       **B. The Court's Inherent Authority**

22       Courts hold the power to fashion appropriate sanctions for conduct that is  
23       abusive of the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S.  
24       Ct. 2123 (1991). Such sanctions are available to combat a variety of willful actions  
25       including not only bad faith, but also recklessness combined with an additional factor  
26       such as an improper purpose. *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001).  
27  
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1 Defendant objected to Interrogatory No. 5 on the grounds that the requested  
2 information was equally available to Plaintiff. However, “courts have unambiguously  
3 stated that this exact objection is insufficient to resist a discovery request.” *Nat’l*  
4 *Acad. of Recording Arts & Sciences, Inc. v. On Point Events, LP*, 256 F.R.D. 678, 682  
5 (C.D. Cal. 2009). Despite this baseless objection, Defendant pointed Plaintiff to a  
6 document that did not answer the question posed by the interrogatory. Accordingly,  
7 sanctions are appropriate.

8 The drastic sanctions Plaintiffs seek, preclusion of evidence, cannot be granted.  
9 Despite Plaintiffs’ claims to the contrary, Plaintiffs had no right to rely on  
10 Defendant’s response. Plaintiffs were in possession of evidence demonstrating that  
11 Defendant’s response was an evasive non-answer, and yet Plaintiffs made no attempt  
12 to remedy the situation, such as filing a motion to compel under Rule 37(a).  
13 Furthermore, Plaintiffs have produced no evidence of bad faith to warrant such a  
14 drastic sanction as preclusion of evidence.

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16 Although no evidence of bad faith has been presented, and even if the improper  
17 reference to sanofi 0000067 was a mere oversight, such recklessness must be  
18 discouraged. Interrogatory No. 5 posed a question aimed precisely at the core of the  
19 issue at hand, and Plaintiffs were entitled to a substantive response. Instead,  
20 Defendant responded with a baseless objection and an improper reference.  
21 Accordingly, to remedy any prejudice Plaintiffs may have suffered due to Defendant’s  
22 evasive response, Plaintiffs may conduct additional video depositions of those  
23 involved in the decision to terminate Mr. Peterson, and the costs of the depositions  
24 will be paid by Defendant.

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### III. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Having denied Plaintiffs' request to preclude Defendant from entering evidence as to the reason for Mr. Peterson's discharge, Plaintiffs concede an issue of material fact remains so as to preclude the summary judgment requested by Plaintiffs.

### IV. CONCLUSION

Although Rule 37(d) is inapplicable to the case at hand, and no showing of bad faith has been made, Plaintiffs were entitled to a response to the substance of Interrogatory No. 5. Accordingly, since Defendant offered a baseless objection and directed Plaintiffs to a document that did not supply the requested information, Plaintiffs are entitled to sanctions. Although Plaintiffs' requested sanctions are too drastic for the conduct at issue, Plaintiffs' Motion For Sanctions (ECF No. 29) is **GRANTED** insofar as Plaintiffs may, at Defendant's expense, conduct additional video depositions of those involved in the decision to terminate Mr. Peterson. Having conceded an issue of material fact remains, Plaintiffs' Motion For Partial Summary Judgment (ECF No. 31) is **DENIED**.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and forward copies of the same to counsel of record.

**DATED** this 15th day of August, 2013.

*s/Lonny R. Suko*

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LONNY R. SUKO  
United States District Judge

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